

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5229 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

BABU HUSSAIN RASUL MALEK

Versus

STATE OF GUJARAT

Appearance:

Mr.H.R.Prajapati for M/S THAKKAR ASSOC. for Petitioner
Mr.Neegam Shukla,APP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the judgment and order dated 20.4.1996 passed by the District Magistrate, Surat detaining the petitioner under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 10.6.1996 and since then the petitioner is under detention lodged at Sabarmati Central Jail, Ahmedabad.

This Special Civil Application was filed on 18.7.1996 and on 19.7.1996 Rule returnable for 12.8.1996 was issued but so far no reply or affidavit of the Detaining Authority has been filed.

The grounds of detention show that there are four criminal cases registered against the petitioner. The petitioner's one of the cases is for the offence under IPC. The Detaining Authority has also taken into consideration the statements made by three witnesses against the petitioner with regard to his criminal activities. The statements were recorded on 21.2.1996 and 22.2.1996. The petitioner has been found to be a dangerous person, has been beating innocent persons and there were allegations that he was misbehaving with the ladies.

The detention order has been challenged on more than one grounds but stress has been laid on the point that no case of breach of public order is made out.

In view of the reasons given in the judgment rendered by the Supreme Court in case of M.J.Shaikh Vs. M.M.Mehta (Mustakmiya's case) reported in 1995(2) GLR Pg.1268, it is clear that the allegations and materials relied upon by the Detaining Authority against the petitioner do not constitute a case of breach of public order and it can at the most be said to be a breach of law and order, the detention order therefore deserves to be set aside on this ground alone.

Accordingly, this Special Civil Application is allowed. The impugned detention order dated 20.4.1996 passed by the District Magistrate, Surat is hereby quashed and set aside and the detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.
